

Remarks

Claims 1, 2, 4, 8, 10, 12-18, and 20-22 are pending. Claim 11 is canceled in this amendment. Claims 3, 5-7, 9, 19, and 23-27 were previously canceled. Claim 1 is amended to state that the lecithin product is prepared by a method comprising the steps of:

(a) providing a crude lecithin material;

(b) mixing the crude lecithin material with a blend of ethanol and water to form a first mixture, wherein a weight ratio of the crude lecithin material to the blend of ethanol and water is from about 1:1 to about 1:5;

(c) retaining solids from step (b);

(d) mixing the retained solids in step (c) with a blend of ethanol and water to form a second mixture; and

(e) retaining solids from step (d) and drying the retained solids as an improved lecithin product;

wherein a weight ratio of ethanol to water in the blend of ethanol and water in at least one of steps (b) and (d) is from about 3:1 to about 1:3. Support for this amendment can be found, *inter alia*, in claim 8.

Claims 1 and 8 are also amended to state that a weight ratio of the crude lecithin material to the blend of ethanol and water is from about 1:1 to about 1:5. Support for this amendment can be found, *inter alia*, in cancelled claim 11. Claim 12 is amended so as not to depend from a canceled claim.

Rejection under 35 U.S.C. §103

Claims 1 and 2 were rejected under 35 U.S.C. 103(a) as being unpatentable over Umeda et al. (U.S. Patent No 5,833,858) as further evidenced by the Merck Index.

Umeda et al teach a method for highly concentrating acidic phospholipids from lecithin originating in a plant by a two-step solvent fractionation. In the first step lecithin is combined with alcohols that contain no water (100%) alcohol or not more than 15% water (col. 2 lines 50-56. In col. 3 lines 13-18 is stated that the moisture content of the lower alcohol is preferably 15% or less in order to improve the effect of concentrating the acidic phospholipids in the phospholipid mixture. In present claim 1, as amended, the weight ratio of water in the blend of

ethanol and water in at least one of steps (b) and (d) is from about 3:1 (25% water) to about 1:3 (75% water). One would not read the teachings of Umeda et al. directed to using aqueous alcohol wherein moisture is present in the alcohol at not more than 15% to arrive at the present invention wherein the aqueous alcohol employed has a moisture content of from 25% to 75%.

In order for the Office to show a *prima facie* case of obviousness, M.P.E.P. §2143 requires that the Office must meet three criteria: (1) the prior art reference must teach or suggest all of the claim limitations; (2) there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference, and (3) there must be some reasonable expectation of success. The Office has clearly failed to meet its burden under (1) and/or (2) above, since the teachings of Umeda et al. fail to teach or suggest all of the claim limitations of Applicant's claim 1, as amended. Reconsideration and withdrawal of this ground of rejection is respectfully requested.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Umeda et al. (U.S. Patent No 5,833,858) as further evidenced by the Merck Index and further in view of Losch et al.

It is Applicant's belief that claim 1 is amended to overcome the rejection of Umeda et al. Since claim 4 depends from claim 1, claim 4 is also patentably distinct over Losch et al. There is no disclosure in Losch et al. that compensates for the deficiencies in Umeda et al. Losch et al. teach a composition that contains at least 80% by weight of phosphatidylecholine (PC). The present composition contains PC at from 9 wt% to 24.5 wt%.

In order for the Office to show a *prima facie* case of obviousness, M.P.E.P. §2143 requires that the Office must meet three criteria: (1) the prior art reference must teach or suggest all of the claim limitations; (2) there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference, and (3) there must be some reasonable expectation of success. The Office has clearly failed to meet its burden under (1) and/or (2) above, since the teachings of Umeda et al. with Losch et al. fail to teach or suggest all of the claim limitations of Applicant's claim 4, which depends from claim 1 and further that there is no motivation by one of ordinary skill in the art for employing limitations present in Applicant's claim 4 which depends from claim 1, not present in Umeda et al. and Losch et al. Reconsideration and withdrawal of this ground of rejection is respectfully requested.

Claims 8, 10-18, 21 and 22 were rejected under 35 U.S.C. 103(a) as being unpatentable over Strauss et al. (U.S. Patent No. 4,357,353) in view of Merck Index.

Strauss et al. teach a process for the preparation of an emulsifier from lecithin base by solvent extraction followed by precipitation. It is noted in col. 3 lines 24-29 that

The product obtained by the method of the invention has the following physico-chemical parameters:

1. ratio between Pc and Pe from 7:3 to 6:1, preferably 4:1,

2. Pc content from 65 to 85% by weight, preferably from 75 to 80% by weight,

The phosphatidylcholine (Pc) content is from 65-85%. In present claim 8 the PC content is 9-24.5 wt.%. Further, in Strauss et al., the Pc:Pe ratio is from 7:3 to 6:1. The 7:3 ratio signifies a 70% Pc content and the 6:1 ratio signifies an 85.7% Pc content. In present claim 8, the PC:PE ratio is from 0.39:1 to 1.25:1. Strauss et al. is practicing a different method than the present method of claim 8. One would not read the teachings of Strauss et al. directed to a method for preparing a composition having a high ratio of Pc:Pe to arrive at the present invention that has a low ratio of PC:PE.

Additionally, there is a marked difference between the weight ratio of crude lecithin:blend of alcohol and water of Strauss et al and the present invention. The Strauss et al. lecithin starting material is dissolved in alcohol followed by the addition of water. The below table shows the lecithin:blend of alcohol and water.

Strauss et al. Table

Example No.	Lecithin kg	Alcohol kg	Water kg	Lecithin:blend of alcohol and water
1	0.45	7.05	7.50	1:32.3
2	1.68	7.44	10.88	1:10.9
3	0.15	7.28	11.22	1:123.3
4	0.62	9.54	9.82	1:31.2
5	0.24	4.62	15.14	1:212.4
6	0.82	8.08	11.1	1:24.4

In current claim 8, the weight ratio of the crude lecithin material to the blend of ethanol

and water is from about 12:1 to about 1:5. In the Strauss et al. examples, the closest weight ratio to the present invention of the crude lecithin material to the blend of ethanol and water is 1:10.9. One would not read the teachings of Strauss et al. directed to a weight ratio of the crude lecithin material to the blend of ethanol and water of about 1:10.9 to arrive at the present invention having a weight ratio of the crude lecithin material to the blend of ethanol and water of from about 12:1 to about 1:5.

Claim 20 was rejected under 35 U.S.C. 103(a) as being unpatentable over Strauss et al. as applied to claims 8, 10-18, 21 and 22 above and further in view of Losch.

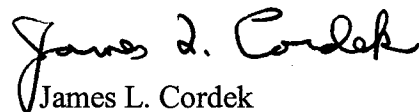
It is Applicant's belief that claim 8 is amended to overcome the rejection of Strauss et al. Since claim 20 depends from claim 8, claim 20 is also patentably distinct over Losch et al. There is no disclosure in Losch et al. that compensates for the deficiencies in Umeda et al. Losch et al. teach a composition that contains at least 80% by weight of phosphatidylecholine (PC). The present composition contains PC at from 9 wt% to 24.5 wt%.

For the foregoing reasons, it is submitted that the present claims are in condition for allowance. The foregoing remarks are believed to be a full and complete response to the outstanding office action. Therefore favorable reconsideration and allowance are respectfully requested. If for any reason the Examiner believes a telephone conference would expedite the prosecution of this application, it is respectfully requested that she call Applicants' representative at 314.659.3218.

If any additional fees are due in connection with the filing of this document, the Commissioner is authorized to charge those fees to our Deposit Account No. 50-0421.

Date: April 29, 2008

Respectfully submitted,
SOLAE, LLC


James L. Cordek
Registration No. 31,807

4300 Duncan Ave
St. Louis, MO 63110
314.659.3218